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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/764,553 01/27/2004		Deepankar Chatterjee	Q74006 9897		
23373	7590	01/11/2006		EXAMINER	
SUGHRUE	,			AKHAVAN	N, RAMIN
2100 PENNSYLVANIA AVENUE, N.W. SUITE 800				ART UNIT	PAPER NUMBER
WASHING1	ON, DC	20037	1636		

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be seriable under the provisions of 37 CFR 1-136(a). In no event, however, may a regy be timely filled in the provision of 17 CFR 1-136(a). In no event, however, may a regy be timely filled in the provision of the provi		Application No.	Applicant(s)						
Ramin (Ray) Akhavan 1636	Office Action Commons	10/764,553	CHATTERJEE, DEEPANKAR						
- The MALING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Edutations of time may be sevalable under the providence of 30 °FR 11-30°C, in no event, however, may a cepty be timely filled. 2 NO period for reply is appelled above, the maintain statutory panied will apply and value gape SIX (8) MONTH'S from the mating date of this communication. 5 Pailur to reply will this set or considered period for reply in appelled above, the maintain statutory panied will apply and value gape SIX (8) MONTH'S from the mating date of this communication. 5 Pailur to reply will this set or considered period for reply value provided by the following the provided will be set or communication. 5 Pailur to reply will this set or communication (s) filled on 27 January 2004. 20	Office Action Summary	Examiner	Art Unit						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Expectations of time may be available under the provisions of 37 CFR 1.136(a). In or event, however, may a neity be timely filled. - Expectations of time may be available under the provisions of 37 CFR 1.136(b). In or event, however, may a neity be timely filled. - Expectations of time may be available under the provisions of 37 CFR 1.136(b). In or event, however, may a neity be timely filled. - Fallus to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S. 5, 13.3). Any reply rocked by the Office bett burn histoer months after the mailing date of this communication, even if timely filled, may reduce any eventure patient term subjections. - Special term subjections. - Special This action is FINAL. - 2D) This action is non-final. - Spince this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. - Disposition of Claims - A) Claim(s) 1-22 is/are pending in the application. - 4a) Of the above claim(s) is/are withdrawn from consideration. - 5b Claim(s) is/are allowed. - Claim(s) is/are allowed. - Claim(s) is/are allowed. - Claim(s) is/are are pending in the application and/or election requirement. - Application Papers - 9) The specification is objected to by the Examiner. - 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. - Application Papers - 9) The specification is objected to by the Examiner. - 10 Ab to drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. - Application Papers - 10 Ab to or declaration is objected to by the Examiner. - 10 Ab to or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. - Priority under 35 U.S.C. § 119 - 11 Cer									
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Edmains of time may be available under the provision of 37 ER1 13(6), i.m. event, however, may a ray by be timely filed after 51X (6) MONTHS from the mailing date of this communication; of 37 ER1 13(6), i.m. event, however, may a ray by be timely filed after 51X (6) MONTHS from the mailing date of this communication; of the file of the provision of the mailing date of this communication; of the provision of the	The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address						
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121 (each group designated by a Roman numeral as follows):

- I. Claims 1-12, drawn to a promoter element having SEQ ID NO: 2 and an expression system comprising the same, classified in class 536, subclass 24.1.
- II. Claims 13 to 22, drawn to a method of preparing a promoter expression system, classified class 435, subclass 69.2.

The claims encompass 2 distinct inventions. The inventions are related as product and process of using said product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, given the level of skill in the art, the promoter can be mobilized into a distinct plasmid vector(s) thus utilized in a completely distinct expression system (e.g., a vector system utilizing a vector that is distinct as compared to pSAK12). As such, searching for a product would not necessarily yield a particular process.

It should be noted that there is a possibility of rejoinder, where the restriction is required between product and process claims, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

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In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai, In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. Failure to do so may result in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Conclusion

The claims encompass 2 distinct inventions (Groups I and II). Because these inventions are distinct for the reasons given above, and require a separate search, restriction for examination purposes as indicated is proper. Applicant is advised that a reply to this restriction requirement must include an election for the invention (i.e., a single group) to be examined, for the reply to be complete, notwithstanding that the requirement be traversed (37 CFR 1.143). Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if none or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanies by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramin (Ray) Akhavan whose telephone number is 571-272-0766. The examiner can normally be reached on Monday-Friday from 8:30-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, Ph.D. can be reached on 571-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully submitted,

Ray Akhavan/AU 1636

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PATENT EXAMINER

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